

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code Sec. 150.201(i), enclosed), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. (This is a GIL).

February 26, 2002

Dear Xxxxx

This letter is in response to your letter that we received on November 26, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I live in Illinois and a few weeks ago I purchased a nutritional product from AAA, and was charged a retail tax.

As you know, this is against the law to charge a sales tax when the purchaser buys items from out of state companies.

I wrote a complaint to the president of AAA and received a phone call from him. He was irate, and said he would sue me for harassment(!).

I filed a complaint to the Dept. of Revenue in Florida, but they replied saying I must file my complaint with the Illinois Dept. of Revenue.

I am therefore asking you to investigate this company and put a stop to their illegal collection of tax dollars. I wonder if the company actually remits to the Illinois Dept. of Revenue all of the illegally collected tax dollars.

If they are allowed to continue, then other companies will start to do the same and we the people will be burdened with an additional tax to pay.

Please be advised that out-of-State companies are often required to collect and remit Illinois Use Tax (sales tax) on sales of tangible personal property to Illinois customers. The Illinois sales tax structure imposes two separate but complementary taxes upon the sale and use of tangible personal property. Section 2 of the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/2, imposes a tax upon persons engaged in the business of selling at retail tangible personal property. The complementary Use Tax is imposed by Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, which imposes a tax

upon the privilege of using in this State tangible personal property purchased at retail from a retailer. The Retailers' Occupation Tax is measured upon the retailer's gross receipts and the retailer is statutorily required to collect the complementary Use Tax from his customer. In effect this reimburses the retailer for his Retailers' Occupation Tax liability. If the Use Tax is not collected by the retailer, the customer is required to pay it directly to the State of Illinois.

This means that under Illinois sales tax law, a retailer's delivery of goods to a customer in Illinois makes the transaction subject to either Retailers' Occupation and/or Use Tax liability, unless the customer can document an exemption. Absent an exemption, the only question is how the tax gets paid. We are providing the following general information on Illinois retailers and out-of-State Use Tax collectors for your information.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers.

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code Sec. 150.201(i), enclosed), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code Sec. 150.801(c), enclosed. The retailer must collect and remit Use Tax to the State on behalf of his Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The provisions of this regulation are subject to the U.S. Supreme Court ruling of Quill v. North Dakota, 112 S. Ct. 1902 (1992), in which the Supreme Court set forth guidelines for determining what nexus requirements must be met before a business is properly subject to a state's tax laws. Quill invoked a two-prong analysis consisting of 1) whether the Due Process Clause is satisfied, and 2) whether the Commerce Clause "substantial nexus" test is met before the state can impose tax collection responsibilities.

The due process test will be met if requiring the retailer to collect state sales tax is fundamentally fair to the retailer. If the retailer intentionally avails itself of the benefits of the taxing state's economic market, then due process is satisfied, Quill at 1910.

Notwithstanding the fact that due process has been met, a business must also have a physical presence in the taxing state in order for the "substantial nexus" test to be met under the Commerce Clause and before a state can impose tax collection responsibilities on an out-of-State retailer. A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative, and it is immaterial for tax purposes that the representative's presence is temporary.

If an out-of-State retailer has no contact with Illinois, it does not fall within the definition of a "retailer maintaining a place of business in this State", and it need not register as an out-of-State Use Tax collector. Such companies may, however, register as voluntary Use Tax collectors.

Please note that the fact that the seller may not be required to act as a Use Tax collector for Illinois does not relieve its Illinois purchaser of Use Tax liability. If the seller does not register and collect Illinois Use Tax, its customer would have to pay the tax liability directly to the Illinois Department of Revenue.

Please be informed that Section 11 of the Retailers' Occupation Tax Act, 35 ILCS 120/11, authorizes us to inform you the business known as AAA has been filing returns under the Act. However, confidentiality provisions prevent us from disclosing further information that is contained on those returns.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.